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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.R., Defendant and Appellant.	G039884 (Super. Ct. No. DL026893) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Donna L. Crandall, Judge. Affirmed as modified.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Upon finding J.R. committed assault with a deadly weapon, the juvenile court granted him probation subject to various terms and conditions. J.R. contends three

of the conditions are unconstitutional, and we believe two of them are. We will modify those conditions and affirm the judgment in all other respects.

FACTS

J.R. was at a party one night when a group of people confronted him and accused him of having beaten up one of their friends. J.R. denied it. Further words were exchanged, and as the confrontation intensified, J.R. pulled a knife and stabbed another boy in the chest. He then ran to a nearby school, where he was apprehended by the police.

The trial court found J.R. committed assault with a deadly weapon and inflicted great bodily injury. In setting forth the terms of his probation, the court ordered him, inter alia, 1) not to associate with anyone disapproved of by the court, his parents or his probation officer, 2) not to associate with any member of a tagging crew and 3) not to use or possess a dangerous or deadly weapon.

I

J.R. contends all three of these conditions are unconstitutionally vague and overbroad. While we uphold the third condition as being legally sound, we agree the first two must be modified to comport with due process.

"The juvenile court has wide discretion to select appropriate conditions and may impose '"any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.'"' [Citations.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) Nevertheless, juvenile probation conditions must be sufficiently clear to give the probationer fair notice of what is expected of him. "The vagueness doctrine bars enforcement of '"a [condition] which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." [Citations.]' [Citation.] In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that 'abstract legal commands must be

applied in a specific *context,*' and that, although not admitting of 'mathematical certainty,' the language used must have '"*reasonable* specificity."' [Citation.]" (*Id.* at p. 890.)

In addition, "[a] probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]" (*In re Sheena K., supra,* 40 Cal.4th at p. 890.) Even a condition that is reasonably precise in terms of describing what conduct it proscribes """"may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct[,]""" such as the right to associate with others. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) Although the right of association is not unlimited, it encompasses "associations formed for the purpose of pursuing 'a wide variety of political, social, economic, educational, religious, and cultural ends,' and as such [it is] closely aligned with freedom of speech." (*Id*. at p. 628, fn. 10.)

In *In re Sheena K., supra,* our Supreme Court considered a probation condition that prohibited the defendant from associating with anyone disapproved of by her probation officer. Because the condition "did not notify defendant in advance with whom she might not associate through any reference to persons whom defendant knew to be disapproved of by her probation officer," the court found it was unduly vague. (*In re Sheena K., supra,* 40 Cal.4th at pp. 891-892.) However, the court noted such a condition would be constitutional if it contained a knowledge requirement, i.e., if it "explicitly direct[ed] the probationer not to associate with anyone 'known to be disapproved of' by a probation officer or other person having authority over the minor." (*Id*. at p. 892.) The court also decided that a knowledge requirement of this sort could be added on appeal to render a vague condition constitutional. (*Ibid*.)

Like the probation condition at issue in *In re Sheena K.,* the probation condition prohibiting J.R. from associating with anyone disapproved of by the court, his parents or his probation officer is unduly vague because it fails to advise him in advance

of the people he must avoid. The Attorney General does not contend otherwise. In fact, he admits that in order to pass constitutional muster, the condition must be limited to associations with persons J.R. *knows* to be disapproved of by the court, his parents or his probation officer. We will modify the condition accordingly.

Relying on the case of *People v. O'Neil* (2008) 165 Cal.App.4th 1351, J.R. also contends the condition is overbroad because it does not limit the class of people with whom he may not associate. The probation condition at issue in *O'Neil* was similar to the one in this case, in that it prohibited the defendant from associating with persons designated by his probation officer. After finding the condition was constitutionally deficient for failing to contain a knowledge requirement (see above), the court identified "a larger problem in the wording of the condition," that being, "there are no limits on those persons whom the probation officer may prohibit defendant from associating with." (*Id*. at p. 1357.)

The *O'Neil* court determined the trial court may properly "leave to the discretion of the probation officer the specification of the many details that invariably are necessary to implement the terms of probation. However, the court's order cannot be entirely open-ended. It is for the court to determine the nature of the prohibition placed on a defendant as a condition of probation, and the class of people with whom the defendant is directed to have no association. Since the condition in this case contains no such standard by which the probation department is to be guided, the condition is too broad and must either be stricken or rewritten to provide the necessary specificity." (*People v. O'Neil, supra*, 165 Cal.App.4th at pp. 1358-1359.)

Importantly, however, the *O'Neil* court expressly limited its holding to cases involving adult probationers. (*People v. O'Neil, supra*, 165 Cal.App.4th at p. 1358, fn. 4.) It offered no opinion as to whether the condition at issue could be lawfully imposed on a juvenile probationer. But the court did note that "[c]onditions of juvenile

probation may confer broader authority on the juvenile probation officer than is true in the case of adults [citations]." (*Ibid.*)

"This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed. The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents. And a parent may 'curtail a child's exercise of the constitutional rights . . . [because a] parent's own constitutionally protected "liberty" includes the right to "bring up children" [citation,] and to "direct the upbringing and education of children." [Citation.]' [Citations.]" (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 [upholding probation condition that required juvenile offender to stay out of Los Angeles County unless he was accompanied by a parent or obtained permission from his probation officer].)

In recognition of these principles, this court has approved probation conditions similar to the one at issue in this case. For example, in *In re Frank V.* (1991) 233 Cal.App.3d 1232, we found a probation condition that prohibited the juvenile from associating with anyone disapproved of by his probation officer or his parents was "consistent with the rehabilitative purpose of probation and constitutional parental authority" and did not impermissibly burden his right of association. (*Id.* at p. 1243.) Although the juvenile challenged the condition as being overbroad, we determined, "The juvenile court could not reasonably be expected to define with precision all classes of persons which might influence [the juvenile] to commit further bad acts. It may instead rely on the discretion of his parents, and the probation department acting as a parent, to promote and nurture his rehabilitation." (*Ibid.*; accord *In re Byron B.* (2004) 119 Cal.App.4th 1013.)

J.R. contends this reasoning "is constitutionally problematic because it would enable the probation officer to act in an arbitrary or capricious manner in naming who is off limits to [him], without furthering the goals of juvenile justice[.]" But we are

confident J.R.'s probation officer will respect his right of association and will not seek to limit that right unless it reasonably appears a particular association would be detrimental to his reformation and rehabilitation. (See *In re Antonio R., supra,* 78 Cal.App.4th at p. 942.) If he/she does not, J.R. will be free to return to us and complain. We see no need to attempt to define the type or types of associations that may fall within the allowable bounds. Because the subject condition does no more than reaffirm the traditional prerogative of parental oversight (*ibid.*), we reject J.R.'s contention the condition is overbroad.

II

Unlike that condition, the second probation condition at issue prohibits J.R. from associating with a particular group of people in that it forbids him from having contact with any member of a tagging crew. Although the condition is very specific as to whom it pertains, J.R. argues it is constitutionally infirm because it does not differentiate between legal and illegal tagging activities. As he puts it, "'tagging crew' activities can be legal when performed with municipal approval (e.g., graffiti in designated areas like the 'pit' area of the Venice Boardwalk, or the 'sea walls' in Huntington Beach) or can be illegal when performed without permission of the municipal or private owner of the wall or other structure being 'tagged.' [¶] In the definitional vacuum arising from the lack of guidance from dictionaries or statutory, decisional or common law, the probationary condition's associational bar regarding 'members' of 'tagging crews' is . . . unconstitutionally vague, uncertain, and overbroad . . . ."

The Attorney General argues the term tagging has a plain, well-established meaning, which is to describe the act of "marking walls and surfaces with graffiti." His inclusion of the word "graffiti" in this definition is presumably intended to imply that such markings are prohibited by law. However, the word graffiti applies generally to any "crude drawing or inscription scratched on a wall or other surface . . . ." (American Heritage Dict. (2d college ed. 1982) p. 570.) And, as this court has noted, the purpose of

a tagging crew is simply to create graffiti, i.e., to "mark[] surfaces with identifying letters, names and logos." (*In re Angel R.* (2008) 163 Cal.App.4th 905, 912, fn. 6.) While the term tagging often conjures up nefarious images in peoples' minds, there is no criminal or illicit connotation in the word itself.

Having said that, we fully recognize that many instances of tagging will fall within the statutory definition of vandalism. But in order for a person to be guilty of vandalism, the marking in question must be *unauthorized*. (Pen. Code, § 594, subds. (a)(1), (e).) As this limitation is not included in J.R.'s probation condition, the condition is overbroad.

A similar issue was presented in *People v. Lopez* (1998) 66 Cal.App.4th 615, in which the court modified a probation condition prohibiting Lopez from associating with any member of a gang. Noting that the term "gang" has both sinister and benign connotations, the court incorporated into the condition the definition of a criminal street gang set forth in Penal Code section 186.22. The court stated, "By so amending the condition, any due process concerns about it will be eliminated and Lopez will be unambiguously notified of the standard of conduct required of him." (*People v. Lopez, supra,* 66 Cal.App.4th at p. 634; see also *Lanzetta v. New Jersey* (1939) 306 U.S. 451 [striking down a statute which criminalized membership in a gang as being violative of due process].)

Likewise here, modifying the subject probation condition to prohibit J.R.'s association with any member of a tagging crew that engages in *unauthorized* tagging activities will eliminate any concerns about vagueness or overbreadth. And since the condition was likely intended to prevent J.R. from associating with such crews, the modification will more accurately reflect the purpose of the condition. Accordingly, we will modify the condition in this fashion.

The condition must also be modified for the reasons explained in *In re Sheena K., supra,* 40 Cal.4th 875. As we discussed in section I above, that Supreme

Court decision makes clear that a defendant cannot be found in violation of probation for associating with a person who belongs to a prohibited group unless he actually *knows* the person belongs to that group. (*Id*. at pp. 891-892.) Therefore, we will modify the tagging condition of J.R.'s probation to include this additional requirement. (See *id*. at p. 892.)

III

Lastly, J.R. takes aim at the probation condition that prohibits him from using or possessing a dangerous or deadly weapon. He contends the condition is vague and overbroad because it could be applied to prohibit him from possessing common, everyday items like kitchen knives and can openers, as well as tools that may be needed in his work, such as box cutters and screwdrivers.

However, the term "dangerous or deadly weapon" has a well-established legal meaning to guide J.R. in his behavior. As our Supreme Court has explained, the term includes both "the classic instruments of violence" that were "specially created or manufactured for criminal purposes" and ordinarily harmless objects. (*People v. Grubb* (1965) 63 Cal.2d 614, 620-621.) The court also clarified that the possession of objects falling into the latter category is prohibited only when "the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless, purpose. [Citation.]" (*Id.* at pp. 620-621, fn. omitted.)

With this qualification in mind, J.R. is not left guessing as to which items he can and cannot handle. If his intent in picking up a fork is simply to eat his peas, for example, then he obviously is not in danger of running afoul of the no-weapon condition. But the opposite is true if he intends to use the utensil to stab a neighbor. This distinction seems simple enough that not only the average person but the vast majority of below average ones could easily understand it. Therefore, J.R. cannot complain the no-weapon condition is vague, overbroad or otherwise unconstitutional.

DISPOSITION

The condition of J.R.'s probation prohibiting him from associating with anyone disapproved of by the court, his parents or his probation officer is modified as follows: J.R. shall not associate with any person he knows is disapproved of by the court, his parents or his probation officer.

The condition of J.R.'s probation prohibiting him from associating with any member of a tagging crew is modified as follows: J.R. shall not associate with any person he knows is a member of a tagging crew that engages in unauthorized tagging activities.

In all other respects, the judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.